86 1907

Supreme Court, U.S.
FILED
JUN 3 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1986

Dilip K. Paul, Petitioner

v.

Federal Mine Safety

and Health Review Commission

and

PB-KBB, Inc.

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

Anson D. Phipps, Counsel for PB-KBB, Inc.

2211 Norfolk, Suite 410

Houston, Texas 77098

AC 713/520-8787

NO. _____

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1986

Dilip K. Paul, Petitioner

v.

Federal Mine Safety

and Health Review Commission

and

PB-KBB, Inc.

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

Anson D. Phipps, Counsel for PB-KBB, Inc.

2211 Norfolk, Suite 410

Houston, Texas 77098

AC 713/520-8787

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1986

NO. _____

Dilip K. Paul, Petitioner

v.

Federal Mine Safety

and Health Review Commission

and

PB-KBB, Inc.

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO GRANTING OF

WRIT OF CERTIORARI

SALUTATION

To The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

PB-KBB, Inc., the Respondent herein, prays that the Court deny Writ of Certiorari in the above styled and captioned cause.

Table of Contents

	Page
Salutation	2
Table of Authorities	4
Cases	4
Statutes	4
Certificate Required by Rule 28	5
Statement as to Attorney's Admission to the Bar	9
Statement of the Case	10
Reason for Denying the Writ	11
Summary of Argument	11
First Impression Consideration	12
Interpretation of the Mine Act	13
Conclusion	16

Table of Authorities

	Page
Cases	
Donovan v. Carolina Stalite Co., 734 F.2d 1547 (D.C. Cir. 1984)	14
Donovan v. Stafford Construction Co., 732 F. 2d 954 (D.C. Cir. 1984)	14
Marshall v. Stoudts' Ferry Preparation Co., 602 F. 2d 589 (3rd Cir.), Cert. den., 444 U. S. 1015 (1980)	14
Statutes	
Federal Mine Safety & Health Act of 1977, 30 U.S.C. §801 et seq.	passim
30 U.S.C. §802(g)	10
30 U.S.C. §802(h)	10, 12, 15, 16, 17
30 U.S.C. §815(c)	10

NO. _____

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1986

Dilip K. Paul, Petitioner

v.

Federal Mine Safety

and Health Review Commission

and

PB-KBB, Inc.

1. CERTIFICATE REQUIRED BY RULE 28

The undersigned, counsel of record for PB-KBB, Inc., certifies the following regarding such corporation:

2. PB-KBB, Inc. is a Delaware corporation with no corporate securities available to the general public. Fifty percent of its stock is owned by PARSONS

BRINCKERHOFF QUADE & DOUGLAS, INC. The other fifty percent is owned by KAVERNEN BAU und BETRIEBS GESSELLSCHAFT m b h (Gmbh).

Currently, PB-KBB,Inc. is engaged in a joint venture known as TEXSTOR. Its affiliate in such joint venture is ENVIRONMENTAL SCIENCE AND ENGINEERING, INC.

3. PARSONS BRINCKERHOFF QUADE & DOUGLAS, INC.

One Penn Plaza

New York, New York 10001

AC 212/613-5000

A New York corporation with no corporate securities available to the general public.

4. KAVERNEN BAU UND BETRIEBS GESELLSCHAFT m b h (GmbH)

Rathenaustrasse 13-14

Post Office Box 32-60

D-3000, Hannover 1

Federal Republic of Germany

(05-11) 16 38 1

A Federal Republic of Germany corporation with no corporate securities available to the general public.

Fifty percent owned (each) by SALZGITTER GESELLSCHAFT m b h (GmbH) and PREUSSAG AKTIENGESELLSCHAFT (A G).

5. SALZGITTER GESELLSCHAFT m b h (GmbH)
332 SalzgiHer 41, Postfoch 411169
Federal Republic of Germany
(05-341) 211

No corporate securities available to the general public.

6. PREUSSAG AKTIENGESELLSCHAFT (A G)
Post Office Box 48 - 27
Leifnizufer 9, D-3000 Hannover 1
Federal Republic of Germany
(05-11) 12 32 1

Corporate securities in the amount of 400,000,000 Deutsche Marks available to the

general public through the Frankfort and Hannover Stock Exchanges.

7. STATEMENT AS TO ATTORNEY'S ADMISSION TO THE BAR

At the time this Brief is being prepared, Anson D. Phipps, attorney for PB-KBB, Inc., is preparing an Application for Admission to the Bar of the United States Supreme Court. Such Application for Admission shall be filed contemporaneously with the filing of Respondents' Brief herein.

STATEMENT OF THE CASE

8. This is an attempt by Petitioner, Paul, to be brought within the coverage of the Mine Act whistle blower provisions of 30 U.S.C. §815(c). In order to gain this application, the facts of this case must fall within the covered definitions of 30 U.S.C. §802(g) and (h).

9. Paul was fired by PB-KBB. However, he was not fired because he blew the whistle on a dangerous design of a mine.

10. PB-KBB had been hired by the government to provide preliminary design work for the construction of an exploratory shaft facility (ESF) for the storing of nuclear waste. There is some question as to whether or not the ESF's, when constructed would satisfy the definition of a mine. The ESF's

were simply for the purpose of determining whether underground salt depositories were suitable for the storing of nuclear waste.

11. No construction had been begun on the ESF's, at time of the incidents material to this lawsuit. Indeed, no final sites had been selected for this construction.

12. Paul was working as an engineer in the offices of PB-KBB, Inc. in Houston, Texas. There was no nature of traditional sense mining activity being conducted at such office nor being conducted by Paul in his employment duties.

REASON FOR DENYING WRIT OF CERTIORARI

Summary of Argument

13. Respondent, PB-KBB agrees with the Petitioner that "the Mine Act pervasively regulates the mining industry," (p. 15 of Petition of Paul).

14. However, PB-KBB argues that a mine did not exist in the instant case as defined at 30 U.S.C. §802(h)(1). Paul could not qualify as a miner or representative of miners, if no mine existed.

First Impression Before This Court

15. While the Respondent fully recognizes that this Court is the Supreme Law of the Land; the question, now before the Court, has been examined and fully ruled upon by the United States Court of Appeals, D. C. Circuit. Respondent believes the Court below has expertly and correctly articulated its reasons for the ruling it has made.

16. While Congress no doubt intended for the Mine Act to have broadest possible application; the Act is not without limitation. Surely the Act should not be infinitely applied to govern all activity in

this country which may some day have some relationship with traditional sense mining activity; no matter how indirect or de minimis that relationship may be.

17. Except for the Ruling of the Administrative Judge, below, every forum in the instant case has unanimously refused the argument of Petitioner, Paul. A review of the facts herein has been made by the Secretary of Labor, the Federal Mine Safety & Health Review Commission, and a unanimous United States Court of Appeals panel. Surely all of those persons are not wrong in the relationship of the Mine Act to the facts herein. All of those persons are certainly expert in application of the Act.

Interpretation of the Mine Act

18. In every recent determination by a court as to novel application of the Mine

Act; there has been some traditional sense mining activity or at least construction has begun on such traditional sense mine, i.e., Marshal v. Stoudt's Ferry Preparation Co., 602 F.2d 589 (3rd Cir.), Cert. den., 444 U.S. 1015, (1980), Donovan v. Carolina Stalite Co., 734 F. 2d 1547 (D.C. Cir. 1984), and Donovan v. Stafford Construction Co., 732 F.2d 954 (D.C. Cir. 1984).

19. Surely, not every company which may sell equipment to a traditional sense mining company, would qualify as a mine itself. However, such would be the result if Paul's interpretation of the definition of a mine were to be accepted by the Court. The Coke machine, the Xerox machine, and earth moving equipment, could all be viewed as equipment, machines, tools, or other property used in, or to be used in the work of extracting

minerals from their natural deposits. To encompass the companies which manufacture and sell such equipment would give the Act infinite application.

20. A design of storage facility is probably not in the nature of mining activity such as would result in the application of the Mine Act. Certainly the office and the equipment which are used in the design of such shaft storage facility do not include the machinery, tools, and equipment spoken of in 30 U.S.C. §802(h) (1) (C).

21. Without getting too deeply into the argument on the merits of this case, the Respondent would show that the definition of mine as used in the Mine Act simply does not include office equipment of an engineering firm in Houston, Texas; which office is far removed from any storage shaft facility which may or may not ever be constructed.

22. If one applies the literal definition of mine as contained in the Mine Act, 30 U.S.C. §802(h) the conclusion is inescapable that the facts of the instant case are not governed by the Act.

Conclusion

23. If the decision of the court below is overturned, it will result in an infinite application of the Mine Act to any and every activity or product which may or may not, some day, have minimal relationship with mining activity. To open such a "Pandora's Box" by a global, omnibus inclusion of all tools, equipment, machines, or facilities was surely not the intent of Congress. To do so, would go beyond the "lands, excavations, . . . impoundments, retention dams and tailing ponds" which are specifically included by the statute. The

statute, in defining a mine, obviously includes only such equipment which is in close proximity or on the site of actual traditional sense mining activity, i.e. 30 U.S.C. §802(h) (1) (A) (B) and (C).

24. For the foregoing reasons this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Anson D. Phipps
Counsel for Respondent,
PB-KBB, Inc.

2211 Norfolk, Suite 410
Houston, Texas 77098
AC 713/520-8787

Dated: June 3, 1987.